

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 800 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? JJJJJJJJJJJJJJJJJJJJ
5. Whether it is to be circulated to the Civil Judge? : NO  
A copy be sent to Chairman, GSFC, Udyog Bhavan

at Gandhinagar.

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GUJARAT VET PHARMA PRODUCTS LTD, THROUH DIRECTOR

Versus

GIDC, 624/B, ADMINISTRATIVE BUILDING  
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Appearance:

DR SONIA HURRA for Petitioner  
MR MB GANDHI for Respondent No. 1, 2  
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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/10/2000

ORAL JUDGEMENT

The petitioner purchased an industrial shed and plot at GIDC, Panoli at an auction sale held by the GSFC in exercise of its powers under Section 29 of the State Financial Corporations Act, 1950. The grievance made in

this petition is that the GIDC demanded the unpaid dues of the previous owner for water charges. It is contended that the demand is illegal and is contrary to the principles laid down by the Hon'ble Supreme Court in Isha Marbles vs. Bihar State Electricity Board, 1995(2) GLH 134.

In the alternative it is submitted that the dues of the previous owner were only Rs.1,82,323/- when the property was attached and still the GIDC is demanding Rs.7,75,771/- as on 30.6.1999.

2. On the other hand, Mr MB Gandhi, learned counsel for the GIDC has submitted that the case on hand is not similar to the case of Isha Marbles. While putting up the property for sale, the general conditions stipulated by the GSFC for sale/transfer of the property under Section 29 of the State Financial Corporations Act, 1950 specifically included following condition No. 14 :-

"14. The tax liabilities pertaining to the land building, any of the local bodies and liability of Gujarat Industrial Development Corporation shall be borne by the purchaser."

It is further contended that the GSFC has specifically mentioned in the sale deed dated 15.7.1999 that in pursuance to the letter of acceptance of offer dated 1.5.1998 and 15.7.1998 and in consideration of the purchaser having already paid the amount of Rs.1,09,00,000/- the vendor doth hereby sale, convey, transfer and assign to the purchaser M/s Gujarat Vet-Pharma Products Ltd. all the rights, title and interest of the industrial concern in the properties mentioned in the schedule hereunder written on 'AS IS WHERE IS' basis and subject to the same rights as of the industrial concern by virtue of the provisions of section 29 of the Act, with all other legal and incidental rights in respect of the properties sold, transferred, conveyed and assigned to the purchaser. The purchaser shall get the same title, right and interest as 'The Industrial Concern' possessed in respect of the properties subject matter of sale and shall enjoy the said uninterrupted by the Vendor/and/or by any other person claiming through by or under the said parties.

It is submitted that in view of the aforesaid stipulations in the sale deed, the petitioner did not get any better right than what the original industrial unit had in the property in question and since the said unit was liable to pay water charges to the tune of

Rs.7,75,771/- as on 30.6.1999, the petitioner is also liable to pay the said amount.

Mr Gandhi has also placed strong reliance on the decision dated 26.4.2000 rendered by this Court (Coram " Hon'ble Mr Justice M.R. Calla) in Special Civil Application No. 7123/99 wherein a similar contention was raised and the Court negatived the applicability of the principles laid down in Isha Marbles case where the conditions in the advertisement and sale deed stipulated the specific conditions about the liability of the purchaser to pay the dues of the GIDC or other entities.

3. Having heard the learned counsel for the parties, it appears to the Court that the principles enunciated in the case of Isha Marbles would not apply in the facts of the present case in view of the specific conditions imposed by the GSFC at the time of holding auction and also in the sale deed.

There is, however, nothing on record to show that when the auction was held, the calculations of the amounts payable to the GIDC were made known to the purchaser. Of course, Mr Gandhi for the GIDC states that it is usual practice for the purchasers to make personal inquiries from the GSFC or from other bodies about outstanding liabilities of the old unit and that, therefore, the purchaser cannot plead ignorance about such liabilities and that in any case since the liability of the purchaser to pay the dues of the old unit remains, it makes no difference in the facts of the present case whether the inquiry was made or not.

It is further submitted that the GIDC is entitled to minimum water charges and drainage charges even when the unit has stopped its operation and water connection.

4. This Court does not express any opinion on the aforesaid controversy as it will be open to the petitioner to make a representation to the GIDC to waive minimum water charges or the penalty or penal interest which may have been levied by the GIDC after the petitioner clears the principal amount of Rs.1,82,323/including any amount which the petitioner might have already paid to the GIDC towards the water charges.

Dr Sonia Hurra, learned counsel for the petitioner states that the petitioner has already paid a sum of Rs.1,30,892/- towards the water charges of the previous owner.

5. It is accordingly directed that after the petitioner Company clears the principal amount of water charges of the previous owner quantified at Rs.1,82,323/= (including the amount so far paid by the petitioner to the GIDC towards the said water charges of the previous owner) and after the Chairman and Managing Director authorized by the Board of Directors of the petitioner Company file an undertaking with the respondent-GIDC that the petitioner shall clear the balance liability of the previous owner towards water charges/drainage charges by six equal monthly instalments (the first instalment shall be payable on 1.1.2001), the GIDC shall provide water connection as well as drainage connection to the petitioner unit within one week from the date of payment of the total amount of Rs.1,82,323/- (including the amount already paid to the GIDC) and the filing of the undertaking as aforesaid.

As stated above, the petitioner will be at liberty to make a representation to the GIDC to waive any charges such as minimum water charges or the penalty/penal interest which might have been levied by the GIDC. As and when the representation is decided, the petitioner shall pay the amount quantified as per such final decision in the six equal monthly instalments starting from 1.1.2001 as aforesaid.

6. Before parting with the matter, the Court would like to observe that apart from any practice which may be there, it would be in the fitness of things if the GSFC also makes available to the intending purchasers the information about the amounts due and payable by the old unit to the other public bodies such as GIDC, GEB and others so that the intending purchasers can make a correct estimate of the value of the property while offering their bids. The GSFC may, therefore, call upon all such public bodies to intimate to the GIDC the amounts due and payable including the amount of penalty or penal interest as separately quantified.

7. The petition is accordingly disposed of in terms of the aforesaid directions and observations.

Rule is discharged.

8. A copy of this order shall be sent to GSFC for considering the observations made in para 6 of this order.

October 5, 2000 (M.S. Shah, J.)

sundar/-